



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: KNUDSON ET AL.

Examiner: S. GILBERT

Serial No.: 10/629,490

Group Art Unit: 3736

Filed: JULY 29, 2003

Docket: 13033.1USC8

Confirmation No.: 7446

Notice of Allow. N/A  
Date:

Due Date: DECEMBER 1, 2005

Title: AIRWAY STIFFENING IMPLANT (as hereby amended)

**CERTIFICATE UNDER 37 CFR 1.8:**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on November 14, 2005.

By: 

Name: Linda M. Beckman

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**23552**

PATENT TRADEMARK OFFICE

Sir:

We are transmitting herewith the attached:

- ☒ Transmittal Sheet in duplicate containing Certificate of Mailing
- ☒ Amendment
- The fee has been calculated as shown below in the "Claims as Amended" table
- ☒ Request for Extension of Time for two month(s) and fee of \$225.00
- ☒ Supplemental Information Disclosure Statement, Form 1449, 1 Reference(s)
- ☒ Terminal Disclaimer
- ☒ Check(s) in the amount of \$100.00 for extra independent claim and \$180.00 for Supplemental Information Disclosure Statement
- ☒ Other: Declaration of Paul J. Buscemi, Ph.D.
- ☒ Return postcard

## CLAIMS AS AMENDED

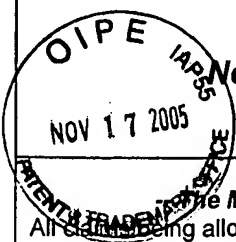
Claims Remaining After Amendment		Highest Number Previously Paid For		Present Extra		Rate		Fee
Total Claims								
12	-	12	=	0	x	25.00.00	=	\$0.00
Independent Claims								
4	-	3	=	1	x	100.00.00	=	\$100.00
MULTIPLE DEPENDENT CLAIM FEE								\$0.00
TOTAL FILING FEE								100.00

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. A duplicate of this sheet is enclosed.

Merchant & Gould P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903  
612.332.5300

By: 

Name: Timothy R. Conrad  
Reg. No.: 30,164  
TRC:lmb



# Notice of Allowability

Application No.

09/398,991

Examiner

Brian Szmal

Applicant(s)

CONRAD ET AL.

Art Unit

3736

**THE MAILING DATE of this communication appears on the cover sheet with the correspondence address--**  
All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on December 18, 2000 and interview on January 4, 2001.
2. ☒ The allowed claim(s) is/are 1-14, 16 and 20-25.
3. ☒ The drawings filed on 17 September 1999 are acceptable as formal drawings.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE FOR SUBMITTING NEW FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION.** This three-month period for complying with the REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL is extendable under 37 CFR 1.136(a).

6. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
7. ☐ Applicant MUST submit NEW FORMAL DRAWINGS
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

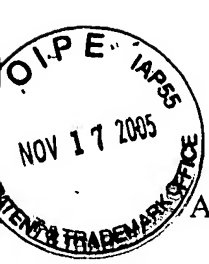
**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.**

8. ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE / SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

## Attachment(s)

- |   |  |
|---|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)         |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                     | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. <u>13</u> | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                 |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material  | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance           |
|   | 9 <input type="checkbox"/> Other   |



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### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David Schmaltz on February 20, 2001.

2. The application has been amended as follows: In line 5, Claim 1; and line 6, Claims 5 and 6:

"to air flow past" should read --in response to air flow past--

### *Allowable Subject Matter*

3. The following is an examiner's statement of reasons for allowance: After reviewing the amendment and remarks filed on December 18, 2000, as well as the interview on January 4, 2001, it was determined that the claims are allowable since no prior art could be found concerning or suggesting a method or an apparatus for treating snoring of a patient through the use of an implant positioned in the soft palate of the patient, wherein the implant has mechanical characteristics for the implant, at least in combination with a fibrotic tissue response induced by

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the implant to alter the dynamic response of the soft palate to allow air flow past the soft palate without application of force external to the soft palate.

Prior art discloses the ablation of the soft palate to remove tissue or utilizing magnets to force the soft palate from the back of the throat. Since the current application utilizes an implant an fibrotic response to tighten the soft palate, the claims are allowable over the prior art.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmalec whose telephone number is (703) 308-3737 and group fax number is (703) 308-0758.

BS



February 20, 2001



JOHN P. LACYK  
PRIMARY EXAMINER